

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>CONSUMERS ENERGY COMPANY</b>	)	
for approval of a power purchase agreement with	)	Case No. U-18425
STS Hydropower.	)	
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At the July 31, 2017 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman  
Hon. Norman J. Saari, Commissioner  
Hon. Rachael A. Eubanks, Commissioner

**ORDER**

On June 23, 2017, Consumers Energy Company (Consumers) filed an application requesting *ex parte* approval of a power purchase agreement (PPA) with STS Hydropower, Ltd. (STS). Consumers' request was filed pursuant to Section 6j(13)(b) of 1982 PA 304 (Act 304), MCL 460.6j, and 2008 PA 295 (Act 295).

The seller under this PPA is a qualifying facility (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 USC 2601 *et seq.* Consumers had a previous long-term PPA with the former operator of the Ada Hydro Plant (Thornapple Association, Inc.) and seeks to enter into a new PPA with the new operator, STS.

The application states that the company is requesting *ex parte* approval of the agreement because the new PPA will not increase rates or charges for any customer beyond the levels which

were previously approved, or that will be approved, by the Commission in Case No. U-18090.

### Discussion

MCL 460.6j(13)(b) provides that the Commission shall:

Not disallow the capacity charges for any facilities for which the electric utility would otherwise have a purchase obligation if the commission has approved capacity charges in a contract with a qualifying facility, as that term is defined by the Federal Energy Regulatory Commission pursuant to the public utilities regulatory policies act of 1978, Public Law 95-617, 92 Stat 3117, unless the commission has ordered revised capacity charges upon reconsideration under this subsection. A contract is valid and binding in accordance with its terms, and capacity charges paid pursuant to that contract are recoverable costs of the utility for rate-making purposes notwithstanding that the order approving that contract is later vacated, modified, or otherwise held to be invalid in whole or in part if the order approving the contract has not been stayed or suspended by a competent court within 30 days after the date of the order, or by July 29, 1987 if the order was issued after September 1, 1986 and before June 29, 1987. The commission shall determine the scope and manner of the review of capacity charges for a qualifying facility. Except as to approvals for qualifying facilities granted by the commission before June 1, 1987, proceedings before the commission seeking those approvals shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

MCL 460.1028(3)-(4) provide in part:

Subject to subsection (5), each electric provider shall meet the renewable energy credit standards with renewable energy credits obtained by 1 or more of the following means:

- (a) Generating electricity from renewable energy systems for sale to retail customers.
- (b) Purchasing or otherwise acquiring renewable energy credits with or without the associated renewable energy.
- (4) For an electric provider whose rates are regulated by the commission, the electric provider shall submit a contract entered into for the purposes of subsection (3) to the commission for review and approval. If the commission approves the contract, it shall be considered consistent with the electric provider's renewable energy plan. The commission shall not approve a contract based on an unsolicited proposal unless the commission determines that the unsolicited proposal provides opportunities that may not otherwise be available or commercially practical through a competitive bid process.

MCL 460.1035(1) provides in part:

If an electric provider obtains renewable energy for resale to retail or wholesale customers under an agreement under PURPA, ownership of the associated renewable energy credits shall be as provided by the PURPA agreement.

This PPA was executed prior to the issuance of the May 31, 2017 order in Case No. U-18090, which clarified that renewable energy credits (RECs) belong to the QF for projects utilizing the Standard Offer tariff. Because the PPA does not include the purchase of RECs, after the final order in Case No. U-18090, a REC-only purchase contract with STS must receive Commission approval under Act 295, if Consumers elects to use RECs for Act 295 compliance.

The Commission has considered the language in Section 6j(13)(b) and Act 295 and finds that the PPA should be approved. *Ex parte* review and approval is appropriate, because the Renewable Energy Purchase Agreement will not affect rates or rate schedules resulting in an increase in the cost of service to customers. The Commission finds no prohibition against *ex parte* approval of this PPA. Approval of the PPA should not be construed as providing Commission support for including its terms and conditions as part of a Standard Offer tariff contract resulting from the final order in Case No. U-18090.

THEREFORE, IT IS ORDERED that the power purchase agreement between Consumers Energy Company and STS Hydropower, Ltd., is approved as in compliance with 1982 PA 304 and 2008 PA 295.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov) and to the Michigan Department of the Attorney General - Public Service Division at [pungpl@michigan.gov](mailto:pungpl@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

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Rachael A. Eubanks, Commissioner

By its action of July 31, 2017.

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Kavita Kale, Executive Secretary